IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

F.A.O. No.235 of 2006

Decided on : October 17, 2006

Basheer Mohammad **Appellant.**

VERSUS

Geeta Devi and others **Respondents.**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr.Tarlok Chauhan, Advocate.

For Respondent No.5 : Mr.Lalit Sharma, Advocate

Deepak Gupta, J.(Oral)

This appeal is directed against the award passed by the learned Motor Accident Claims Tribunal, Chamba in MAC Petition No. 97 of 2004, decided on 21.4.2006. The claimants filed a claim petition claiming that they were the legal representatives of late Ishwar Chand, who died in a motor vehicle accident involving truck No. HP-37-2303 which took place on 30.7.2004. It was alleged that the deceased, Ishwar Chand was traveling in the truck as owner of the goods. The learned tribunal held the claimants entitled to compensation of Rs. 2,35,000/-. It, however, came to the conclusion that the

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

vehicle in question was only covered for 3rd party loss and no premium was paid for covering the loss to the owner of the goods and, therefore, the Insurance Company is not liable to indemnify the awarded amount. The learned tribunal following the judgment in National Insurance Company Ltd. Vs. Baljit Kaur and others (2004) 2 SCC 1 directed the Insurance Company to deposit the awarded amount and held it entitled to recover the same from the owner-insured.

In this appeal filed by the owner the challenge is only qua this finding recorded by the learned tribunal. Mr.Tarlok Chauhan, learned counsel for the appellant, has submitted that after the amendment of the Motor Vehicles Act, 1988 by the amendment Act of 1994, the coverage to the owner of goods is part of the Act policy itself and there can be no policy of insurance which does not cover the liability to the owner of the goods. He further submits that even in Baljit Kaur's case cited by the learned tribunal, the Apex court has clearly held that after 1994 the policy of insurance could cover liability in respect of the owner of goods or his authorized representative. The Apex Court has held as follows:-

> "20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision

contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people." **(emphasis supplied)**

In fact the amendment carried out in 1994 itself makes it clear that the Insurance Company is bound to cover the liability to the owner of the goods. Section 147 (1) (b) (i) of the Motor Vehicles Act, 1988 reads as follows:-

"147.Requirements of policies and limits of liability.- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which –

(a) x x x x x x x x x x x x x x x x x

(b) insures the person or class of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his

> authorized representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place." (emphasis supplied)

A bare reading of this provision shows that the Insurance Company is statutorily bound to cover the liability in respect of owner of the goods or its authorized representative carried in the vehicle.

It is manifest that the learned tribunal has neither cared to go through the judgments in this behalf nor has even cared to read the bare provision of the Motor Vehicles Act, 1988. The award of the learned tribunal being totally illegal and against law is accordingly modified and it is held that the Insurance Company is liable to indemnify the insured for the loss and is not entitled to recover the same from the insured. No costs.

October 17, 2006(K) (Deepak Gupta), Judge